

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of)	
THERESA SUNDQUIST against)	Case No. U-18116
CONSUMERS ENERGY COMPANY.)	
_____)	

At the March 28, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

On June 8, 2016, Theresa Sundquist filed a complaint against Consumers Energy Company (Consumers) alleging that an informal hearing was improperly conducted, Consumers improperly billed her, and Consumers violated the meter testing rules. Ms. Sundquist requested that the Commission order Consumers to refund the amounts charged for her May, June, July, and August 2015 bills and reimburse her for the costs associated with the preparation and prosecution of her complaint. Consumers filed an answer to the complaint on August 10, 2016, denying complainant's allegations.

An evidentiary hearing was scheduled for August 18, 2016, before Administrative Law Judge Martin D. Snider (ALJ). Subsequently, the parties stipulated to an adjournment of the hearing and the hearing was rescheduled for October 19, 2016.

On October 19, 2016, an evidentiary hearing was held before the ALJ. Complainant, Consumers, and the Commission Staff (Staff) participated in the hearing.

In support of the complaint, Ms. Sundquist testified that she received a typical bill in May 2015 and paid it. When she received her June 2015 bill, it was higher than usual, so she contacted Consumers about the high bill. 1 Tr 7. Consumers' representative made an adjustment to her bill after she provided the representative with a meter read. 1 Tr 8. When Ms. Sundquist received her adjusted bill, she asserts that Consumers added kilowatt-hours (kWh) to the May portion of the bar chart included on her bill. *Id.* Also, when she read the meter for Consumers' representative, Ms. Sundquist noted that her meter seemed to be spinning faster than the others in her apartment building. *Id.* Subsequently, Ms. Sundquist contacted Consumers and requested that someone be sent to check the meter. *Id.*

According to Ms. Sundquist, a technician was scheduled to conduct the meter check on August 30, but did not keep the appointment. *Id.* By that time, Ms. Sundquist received her August 2015 bill, which seemed high, so she filed a written dispute with Consumers. 1 Tr 8-9. She also filed a complaint with the Michigan Department of the Attorney General that, unbeknownst to her, was transferred to the Michigan Agency for Energy (MAE) for processing. 1 Tr 9. Ms. Sundquist did not accept the resolution reached between Consumers and MAE, so she pursued her complaint about the addition to the May 2015 usage directly with the company. 1 Tr 9-10. Ms. Sundquist argues that the estimated billing process used by Consumers is illegal and that she has been overbilled because of it. 1 Tr 10-13.

Ms. Sundquist went on to argue that the Commission does not have jurisdiction to hear the portion of her complaint regarding the billing dispute, and that the informal hearing was unconstitutional and does not comply with the Administrative Procedures Act. 1 Tr 13-19. The ALJ ruled that the Commission does have jurisdiction to hear complaint cases. 1 Tr 18.

Consumers presented the testimony of one witness, Brian Morgan, and eight exhibits. Mr. Morgan, a customer care representative for Consumers, testified regarding the company's billing practices, including estimated and actual meter reads. Mr. Morgan testified that, according to Consumers' records, Ms. Sundquist's May 2015 bill was based on an estimated read and the June 2015 bill was based on an actual read. Mr. Morgan explained that the June 2015 bill appeared to be high because it included the usage from the May 2015 bill that was not captured by the estimated read. 1 Tr 23-24. The company then "leveled" the usage and basically split the total actual usage between the May and June bills. 1 Tr 24. Mr. Morgan testified that the company "levels" bills to provide a better basis for bill estimation, should it be needed in the future and in this case, it was done to save the customer money since the summer rates were effective for the June bill. 1 Tr 24-25.

Mr. Morgan also testified that the company adjusted the July bill downward by 1000 kWh because the company believed a dial may have slipped on Ms. Sundquist's meter. He went on to explain that a slipped dial is a meter malfunction that produces a higher meter reading than what was actually used. 1 Tr 28. Mr. Morgan sponsored Exhibit CE-3, an e-mail from him to Ms. Sundquist notifying Ms. Sundquist that Consumers would be replacing her meter, and Exhibit CE-4, the meter testing results of Ms. Sundquist's meter. 1 Tr 29-30. According to Exhibit CE-3, the meter removed from the residence tested within allowable limits, at 99.97 percent accuracy. Consumers also tested the connection at the transformer and the meter socket and voltages at the residence. Nothing out of the ordinary was found and all equipment met specifications. 1 Tr. 31.

Mr. Morgan testified that in an effort to resolve Ms. Sundquist's complaint, he lowered the usage for May, June, and July 2015 to 350 kWh each month, bringing those months more in line with her March and April 2015 usage. 1 Tr 32. Mr. Morgan sponsored Exhibits CE-6 and CE-7 to

refute Ms. Sundquist's allegations, and support his testimony that explanations of the adjustments and the meter testing results were provided to Ms. Sundquist. 1 Tr 32-33. Finally, Mr. Morgan testified that, contrary to Ms. Sundquist's allegation, she was never billed based on 2011 usage. Mr. Morgan informed Ms. Sundquist that as part of his complaint investigation, he learned that previous bills from 2011 indicated the potential usage amount for Ms. Sundquist's current residence. Consumers did not bill Ms. Sundquist the potential amount, but wanted to demonstrate to her that it was possible for someone at her current residence to use that much energy in a billing period. 1 Tr 34-35.

Ms. Sundquist cross-examined Mr. Morgan regarding Consumers' estimated billing procedures. Mr. Morgan responded that he was not aware of how an estimated billing amount was calculated by Consumers' billing system. Ms. Sundquist then asked specific questions about her bills and argued that by adjusting a previous month's bill and causing a balance due, Consumers "back-billed" her and changed an actual reading to an estimated reading. 1 Tr 61-63.

Ms. Sundquist went on to ask Mr. Morgan to explain the difference between an adjustment, an estimate, and an actual read, and continued to attempt to attack the credibility and truthfulness of Consumers' billing system by pointing out items on her bills she did not understand. 1 Tr 64-75.

Ms. Sundquist also asked Mr. Morgan about the testing of her meter, the meter testing report, and Mr. Morgan's letter to her about the potential energy usage at her residence. 1 Tr 75-88.

Ms. Sundquist continued her questioning of Mr. Morgan regarding the bill she received after Mr. Morgan reduced her May, June, and July 2015 bills, and how Consumers applies payments to accounts. 1 Tr 96-100.

Ms. Sundquist then made a statement reiterating her position that Consumers' estimated billing procedures are illegal, that the Commission does not have jurisdiction over her complaint,

that the billing rules regarding estimation procedures and adjusting bills for actual readings are unconstitutional and contrary to contract law, that the hearing process violates due process rights, and that a statute needs to be enacted to protect customers from the shut-off process. 1 Tr 110-115. Ms. Sundquist also requested that Commissioner Norman Saari disqualify himself from participating in the decision in this case because he was formerly employed by Consumers. 1 Tr 117.

In her closing argument, Ms. Sundquist contended that she does not owe the amount that Consumers billed. She alleged that, according to her calculations, she was billed for energy she did not use. She also noted that she made three settlement offers to the company, but they were rejected. 1 Tr 118.

In its closing argument, Consumers explained that Ms. Sundquist received a low estimated bill in May, which was trued-up in June with an actual reading. The company then levelized the bill, making the May and June bills more equal, which resulted in a net benefit to Ms. Sundquist. 1 Tr 118. Consumers argued that Ms. Sundquist's high July bill was due to a slipped dial on the meter and the bill was reduced by 1000 kWh to address this error. 1 Tr 119. Consumers argued that it never billed Ms. Sundquist based on 2011 usage, that it tested her meter, and provided Ms. Sundquist with more credits than necessary in attempts to resolve her complaint and reasonably address her concerns. 1 Tr 119.

The ALJ issued his Proposal for Decision (PFD) on November 15, 2016. In his PFD, the ALJ first addressed Ms. Sundquist's contention that the Commission does not have jurisdiction to conduct a formal hearing on billing disputes such as hers. Pointing to Mich Admin Code, R 792.10439 as the Commission's authority to conduct a formal hearing on billing disputes, the

ALJ found that the Commission has subject matter jurisdiction over Ms. Sundquist's formal complaint and can hold a hearing on the matter.

The ALJ next addressed Ms. Sundquist's allegation that a Consumers' employee provided her with improper legal advice when the employee told her that she did not have to have an informal hearing before filing a formal complaint with the Commission. Again, the ALJ relied on R 792.10439 to make his finding. The ALJ found that the rule does not require a complainant to file a request for an informal hearing before filing a formal complaint with the Commission, and that if Consumers' employee told Ms. Sundquist she could file a formal complaint with the Commission, that information was consistent with the rule. PFD, pp. 15-16. The ALJ found further that even if, as Ms. Sundquist alleges, Consumers' employee did not provide Ms. Sundquist with legal advice regarding the scope of appeal and the burden of proof, there is no rule or statute that requires the utility to provide this information. PFD, p. 16. Therefore, for this issue, the ALJ found that the complainant did not establish that the company violated any statute or rule within the Commission's authority.

The next issue the ALJ addressed involves the complainant's allegations regarding the informal hearing process. The ALJ found that because the formal complaint process and hearing process are *de novo*, and not an appeal of the informal hearing process as the complainant asserts, there is no need to further address or make any findings regarding Ms. Sundquist's specific allegations about what did or did not, and what should or should not, have occurred during the informal hearing process. PFD, p. 17.

The ALJ then addressed the allegation that the meter testing process used by Consumers in this case was inappropriate and did not conform to Commission rules. Ms. Sundquist asserted that Consumers did not test her meter at the service address, did not provide her with the meter testing

results, and that the meter Consumers tested was not the same meter that was removed from her residence. The ALJ agreed with Consumers that there is no rule that requires the utility to test the meter at the service address. The ALJ also found the company's testimony and exhibits persuasive and found that the company, as required by the rules, notified Ms. Sundquist when and where her meter was being tested, that she was permitted to attend the testing, and that the company provided Ms. Sundquist with a copy of the meter testing results on its standard Certification of Meter Test report. PFD, p. 18. The ALJ also found that the evidence showed that the meter that was removed from Ms. Sundquist's residence was, in fact, the meter that was tested. *Id.* The ALJ concluded that no violation of Commission rules occurred regarding the meter testing.

The ALJ addressed the complainant's allegation that the company refused to stipulate to certain facts and to her request regarding information about any factual disputes. However, the complainant did not indicate in her testimony or her complaint what facts she was referring to. The ALJ found that while Mich Admin Code, R 792.10431(2) states that the parties may agree to some or all of the facts, there is nothing that suggests that the parties are required to stipulate to any facts.

The ALJ then addressed complainant's allegations regarding her informal hearing and her appeal of the informal hearing decision. Again, the ALJ stated that the formal complaint process is a *de novo* proceeding, not an appeal of the informal process, and found that there is no need to detail or make further findings regarding these allegations. PFD, p. 20.

Lastly, the ALJ addressed Ms. Sundquist's allegations regarding her billing issues. The ALJ found that Ms. Sundquist was billed for her May, June, and July 2015 electric usage and that Consumers made adjustments and reductions to those bills which resulted in a total savings to Ms. Sundquist of \$363.22. PFD, p. 22. The ALJ also found that the preponderance of the

evidence showed Ms. Sundquist's 2015 estimated bills were not based on her 2011 usage, as she alleged. The ALJ found that the complainant did not meet her burden of proof and did not provide sufficient evidence to support her allegations that Consumers improperly billed her or violated any Commission rule when it initially billed her or subsequently adjusted her bills. PFD, p. 23.

The ALJ recommended that the Commission adopt his finding that the complainant did not meet her burden of proof to support her allegations. He also recommended that the Commission find that Consumers properly billed Ms. Sundquist for her May, June, and July 2015 electric usage and that the Commission deny the complainant's request for relief and damages.

The ALJ provided the parties an opportunity to file exceptions to the PFD by December 6, 2016, and replies, if necessary, on December 29, 2016. The parties then agreed to extend the due date for filing exceptions until February 15, 2017, and for replies, if necessary, to March 1, 2017. No party filed exceptions.

Discussion

In residential complaint cases, the Commission allows some leeway in the formality and technical requirements of the hearing process to ensure complainants are provided with a fair opportunity to present their side of the case. Regardless of the more relaxed process, the complainant still bears the burden of proving his or her position. Ms. Sundquist testified on her own behalf, but did not provide any exhibits in support of her positions. The company provided billing records and records of employees' interactions with Ms. Sundquist, along with the testimony of one witness, in support of its position. While the Commission is sympathetic to Ms. Sundquist's complaints, decisions such as these must be made on the evidentiary record, including the testimony. Based on its review of the record, the Commission finds that the ALJ

provided a thorough and well-reasoned analysis of Ms. Sundquist's claims, and adopts the findings and conclusions of the ALJ.

The Commission finds that Ms. Sundquist did not sustain her burden of proof, and that the complaint should be dismissed with prejudice.

THEREFORE, IT IS ORDERED that the complaint of Theresa Sundquist against Consumers Energy Company is dismissed with prejudice.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order under MCL 462.26. To notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of March 28, 2017.

Kavita Kale, Executive Secretary